

## **SALE OF CHECKS AND MONEY TRANSMISSION ACT**

### **TITLE 6, CHAPTER 13**

#### **§ 1031. Citation**

This Chapter may be cited as "The Sale of Checks and Money Transmission Act."

#### **§ 1032. Definitions**

For the purposes of this Chapter:

- (1) "Check" means any check, draft, money order, personal money order or other instrument for the transmission or payment of money.
- (2) "Commissioner" means the commissioner of financial institutions.
- (3) "Deliver" means to deliver a check to the first person who, in payment for same, makes or purports to make a remittance of or against the face amount thereof, whether or not the deliverer also charges a fee in addition to the face amount, and whether or not the deliverer signs the check.
- (4) "Licensee" means a person duly licensed by the commissioner of financial institutions pursuant to this Chapter.
- (5) "Money transmission" means to engage in the business of selling or issuing payment instruments, selling or issuing stored value, or receiving money or monetary value for transmission, including electronic transmission, to a location within or outside of the United States.
- (6) "Person" means any individual, partnership, association, joint stock association, trust or corporation, but does not include the United States government or the government of this state.
- (7) "Personal money order" means any instrument for the transmission or payment of money in relation to which the purchaser or remitter appoints or purports to appoint the seller thereof as his agent for the receipt, transmission or handling of money, whether such instrument is signed by the seller or by the purchaser or remitter or some other person.
- (8) "Sell" means to sell, to issue or to deliver a check.

#### **§ 1033. License required**

A. No person, except those specified in R.S. 6:1034, shall engage in the business of money transmission or selling checks as a service or for a fee or other consideration without having first obtained a license pursuant to this Chapter.

B. The license granted shall be for the period commencing on April fifteenth and ending on April fourteenth of the year following the year of initial licensure or renewal of a previously issued license, as the case may be. The license fee for the year of initial licensure shall not be prorated based on the number of months the license will be in effect.

C. The office of financial institutions shall deposit the license fee check within two business days after it is received, anything to the contrary in R.S. 49:308 or 950 et seq. notwithstanding, whether or not the application is accompanied by all supporting documents required by law to be furnished as a prerequisite to licensure. However, the act of depositing the license fee shall not be construed as the granting of a license if the commissioner determines that the applicant has not met the requirements of this Chapter.

#### **§ 1034. Exemption from licensing**

No license to transmit money or sell checks as aforesaid shall be required hereunder of any of the following:

- (1) Banks, building and loan associations, savings and loan associations, and credit unions organized under the laws of this state, or any state where deposits are required to be insured by an agency of the federal government or under the general banking laws of the United States; however, nothing herein shall be deemed to enlarge the power of the enumerated persons.
- (2) Agents of a licensee, as provided in R.S. 6:1041.
- (3) A governmental agency, instrumentality, or public entity organized by act of congress or by act of the legislature.

#### **§ 1035. Qualifications**

To qualify for a license hereunder, an applicant shall meet the following requirements:

- (1) If application is made for a new license, the applicant shall submit a business plan, which includes, at a minimum, anticipated volume for the calendar year, as well as the anticipated number of transmission or selling locations. The commissioner shall determine the required bond for each new licensee, based on the information provided by the applicant; however, in no event shall the bond be less than twenty-five thousand dollars.

(2) To qualify for a new license to transmit money or sell checks or for renewal of a previously issued license, an applicant shall also have a net worth of at least one hundred thousand dollars, computed according to generally accepted accounting principles.

(3) The financial responsibility, financial condition, business experience, character, and general fitness of the applicant shall be such as to reasonably warrant the commissioner to believe that the applicant's business will be conducted honestly, carefully, and efficiently. To the extent that the commissioner deems advisable, he may investigate and consider the qualifications of officers and directors of an applicant in determining whether the applicant qualifies.

#### **§ 1036. Applications**

Each application for a license to transmit money or sell checks shall be made under oath on a form supplied by the commissioner. The application shall state the full name and street address of:

- (1) The proprietor, if the applicant is an individual.
- (2) Every member, if the applicant is a partnership or association.
- (3) The corporation and each officer and director of a corporate applicant.

#### **§ 1037. Accompanying fee; statement and bonds**

A. Each application for license, including applications for renewal, to transmit money or sell checks shall be accompanied by:

(1) An investigation fee of three hundred dollars plus an additional fee of twenty-five dollars for each location in the state from which the applicant intends to transmit money or sell checks, up to a maximum of three thousand dollars, which shall not be subject to refund but which, if the license is granted, shall constitute the license fee for the first license year or part thereof.

(2) Financial statements certified to as correct by an owner, principal, officer, or director of the applicant for the preceding three calendar or fiscal years and the year in which the application is submitted.

(3) A surety bond by a bonding company or insurance company authorized to do business in Louisiana in the minimum amount of twenty-five thousand dollars, or a higher amount deemed appropriate by the commissioner, based on the applicant's business plan, for the initial year of licensure.

B. The bond required by licensees whose license is being renewed shall be one-half of the checks outstanding, or one percent of annual volume of money transmitted rounded to the nearest thousand, as shown on the annual report of the licensee. However, in no event shall the bond be less than twenty-five thousand dollars or exceed five hundred thousand dollars, except the commissioner may require an additional amount over the five hundred thousand dollars, up to a total maximum amount of one million dollars, after a hearing, based on the licensee's financial condition. The bond for the second and subsequent years of licensing shall be furnished within thirty days from the date the annual report is due.

C. The bond shall be in a form satisfactory to the commissioner and shall run to the office of financial institutions, for the use and benefit of the office of financial institutions and creditors of the licensee or agent for any liability incurred on any money transferred or check issued by the licensee or agent. Persons who have claims against the licensee or his agents may bring suit directly on the bond. The attorney general may bring suit on the bond on behalf of claimants, either in one action or successive actions. The surety shall have the right to cancel the bond upon giving thirty days notice, in writing, to the commissioner. The surety on the bond shall be relieved of liability for any breach of conditions occurring after the cancellation.

D. In lieu of such corporate surety bond or of any portion required by this Section, the applicant may deposit with the commissioner, or in escrow with a federally insured Louisiana depository institution, either state or federally chartered, as such applicant may designate and the commissioner may approve, cash or securities of not less than the amount of the required corporate surety bond, or any portion of it, based upon the principal amount or market value, whichever is lower, consisting of one or more of the following exclusively enumerated unencumbered items:

- (1) Cash.
- (2) Certificates of deposit.
- (3) Interest bearing stocks and bonds acceptable to the commissioner.
- (4) Notes, debentures, or other obligations of the United States or any agency or instrumentality thereof, guaranteed by either the United States, the state of Louisiana, a city, parish, town, village, school district, or other political subdivision of this state which has been authorized by the constitution, statute, or ordinance to levy and collect taxes.

E. The cash or securities authorized by Subsection D shall be placed in escrow in a federally insured Louisiana depository institution, either state or federally chartered, as provided for in Subsection D, to secure the same obligations as would the corporate surety bond. The licensee shall be entitled to receive all interest and dividends on the cash or securities placed in

escrow. In addition, the depositor shall have the right, subject to the approval of the commissioner, to substitute other securities of the kind or type enumerated in Subsection D, for those previously deposited.

F. The depositor shall be required to substitute other or additional cash or securities of the kind or type enumerated in Subsection D when required to do so by written order of the commissioner for good cause shown.

G. (1) In addition to the bonding requirements of this Section, the licensee shall at all times own and have on hand permissible investments in an amount equal to the aggregate face amount of all outstanding checks sold in the United States or amount of money held over twenty-four hours prior to transmission, for which the licensee is liable for payment.

(2) In this Subsection, "permissible investments" means:

(a) Cash.

(b) Notes, debentures, or other obligations of the United States or an agency or instrumentality thereof, guaranteed by either the United States, any state, any city, parish, county, town, village, school district, or other political subdivision of any state, which has been authorized by the constitution, statute, or ordinance to levy and collect taxes.

(c) Any other investments approved by the commissioner.

(3) To prevent unsafe and unsound practices with respect to the required permissible investments, the commissioner may adopt and enforce reasonable rules to implement this Subsection.

### **§ 1038. Investigation; granting of license**

A. The commissioner shall provide a detailed form, which each applicant shall mail, by certified mail, to the commissioner. The commissioner shall, upon receiving the official, completed application which is accompanied by the fee and documents required by R.S. 6:1031 et seq., investigate to ascertain whether the applicant meets the qualifications established by R.S. 6:1031 et seq., for persons to engage in the business of money transmission or selling checks in this state.

B. If the commissioner determines that the applicant meets the requirements of this Chapter, he shall issue the applicant a license to engage in the business of money transmission or selling checks in this state.

### **§ 1039. Maintenance of bond**

After a license is granted, the licensee shall maintain its bond in the amount prescribed by R.S. 6:1037. If the commissioner determines at any time that the bond is insecure or deficient in amount, he shall by written order require the filing of a new or supplemental bond; however, such determination and bond requirement shall not be unreasonable, arbitrary, or capricious. If the order is not complied with within thirty days following service by certified mail upon the licensee, the commissioner shall suspend the authority of the licensee to transmit money or sell checks in Louisiana and shall commence proceedings to revoke the license.

### **§ 1040. Annual renewal fee; delinquency charge**

A. Each licensee shall pay to the commissioner, on or before April fifteenth of each year, a renewal license fee of three hundred dollars, plus an additional fee of twenty-five dollars for each licensed transmission or selling location in this state, however, the total renewal fee for any license shall not exceed three thousand dollars, regardless of the number of locations.

B. If the renewal fee is received after April fifteenth, a late penalty equal to one-half of the renewal fee, including the fee for each transmission or selling location, shall be paid as a prerequisite for renewal even though the three thousand dollar maximum is exceeded.

C. If payment is made by mail, proof of payment before the delinquency date may be established by sending the renewal fee by certified mail, return receipt requested. A postmark of no later than April fifteenth shall be conclusive proof that timely payment was made.

D. The office of financial institutions shall deposit the license fee check within two business days after it is received, anything to the contrary in R.S. 49:308 or 950 et seq. notwithstanding, whether or not the application is accompanied by all supporting documents required by law to be furnished as a prerequisite to renewal of the license. However, the act of depositing the license fee shall not be construed as granting of a renewal of the license previously issued if the commissioner determines that the applicant has not met the requirements of this Chapter.

### **§ 1041. Agents and subagents**

A. A licensee may conduct his business at one or more locations within this state, as follows:

(1) The business may be conducted through or by means of such agents and subagents as the licensee may from time to time designate or appoint.

(2) No license under this Chapter shall be required of any agent or subagent of a licensee.

B. No licensee shall be required to obtain more than one license under this Chapter regardless of the number of locations within the state at which money is transmitted or checks are sold.

#### **§ 1042. Liability of licensees**

Each licensee shall be liable for the payment of all checks which he sells or money he is obligated to transmit, in whatever form and whether directly or through an agent, as the maker or drawer thereof according to the negotiable instrument laws of this state; and a licensee who sells a check or transmits money, whether directly or through an agent, upon which he is not designated as maker or drawer shall nevertheless have the same liabilities with respect thereto as if he had signed same as the drawer thereof.

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#### **§ 1043. Disclosure of responsibility**

Every check sold by a licensee, directly or through an agent, shall bear the name of the licensee clearly imprinted thereon.

#### **§ 1044. Visitation and examination; revocation of license**

A. The commissioner either in person or through an employee appointed by him, shall visit and examine each licensee or agent on a recurring schedule or at any time whenever, in his judgment, an examination is necessary and expedient. The commissioner may accept an annual report and audit of the affairs of a licensee or agent under this Chapter if it is made by a commissioner of financial institutions or comparable officer of another state, the District of Columbia, or a territory of the United States.

B. The commissioner shall revoke or suspend a license on any ground on which he may refuse to grant a license or for a violation of any provisions of this Chapter.

#### **§ 1045. Hearings**

No license shall be denied or revoked except after a hearing thereon. The commissioner shall give the applicant or licensee at least twenty days' written notice of the time and place of such hearing. The notice shall be by registered or certified mail addressed to the principal place of business of such applicant or licensee. Any order of the commissioner denying or revoking such license shall state the grounds upon which it is based and shall not be effective until twenty days after written notice thereof has been sent by registered or certified mail to the applicant or licensee at such principal place of business.

#### **§ 1046. Penalties**

A. Any person who directly or through another violates or attempts to violate any provision of this Chapter shall be guilty of a misdemeanor, and shall be fined not less than two hundred and fifty dollars but not more than five hundred dollars, or imprisoned in the parish jail for not more than six months, or both. Each transaction in violation of this Chapter and each day that a violation continues shall be a separate offense.

B. A conviction or plea of guilty, or a finding of guilt after a plea of nolo contendere, shall automatically constitute a revocation of the primary license and all location licenses.

#### **§ 1047. Reports**

Each licensee shall file an annual report with the commissioner by March thirty-first for the previous year of money transmission or check selling operations. The report shall contain:

- (1) A complete disclosure of all business activity which it conducted during the previous year in this state.
- (2) A financial statement certified by an owner, principal, director, or officer of the licensee.
- (3) A list of each location in this state at which money was transmitted or checks were sold by the licensee and its agents during the preceding calendar year.

#### **§ 1048. Trust imposed on sales or transmission proceeds**

Agents of licensees shall hold in trust from the moment of receipt the proceeds of a sale or delivery of the licensees' checks or money collected for transmittal. An agent may not commingle the proceeds with his own property or funds, except to use the funds in the ordinary course of its business for the purpose of making change. If any agent of a licensee commingles any proceeds received from the sale of checks issued or money transmitted by the licensee with any other funds or property owned or controlled by the agent, all commingled proceeds and other property shall be considered held in trust in favor of the licensee in an amount equal to the amount of the proceeds due the licensee from the sale of checks or money transmitted

less the amount due the agent from the sale or transmission. In the event that a licensee's license is revoked by the commissioner pursuant to R.S. 6:1039, all proceeds then held in trust by agents of that licensee shall be deemed to have been assigned to the commissioner.

#### **§ 1049. List of financial institutions**

When a license is suspended and revoked, the licensee shall supply the commissioner with a list of the financial institutions where he has transacted such business as is governed by the provisions of this Chapter.

#### **§ 1050. Retention of surety bond**

The commissioner shall retain the surety bond required by this Chapter until the list required by R.S. 6:1049 has been supplied and thirty days have passed since the financial institution or institutions have been notified in accordance with R.S. 6:1051.

#### **§ 1051. Notification of financial institutions; violations; penalties**

A. When a license is suspended and revoked, the commissioner shall notify the financial institution or institutions of the former licensee that the person is no longer authorized to transmit money or sell checks under the provisions of this Chapter.

B. After such notification, no financial institution shall participate in a transaction with a former or suspended licensee in contravention of the provisions of this Chapter; however, a financial institution may accept deposits of funds into an account of a former or suspended licensee if such account does not have adequate funds to honor all outstanding checks as the term "check" is defined by R.S. 6:1032(1).

C. The commissioner may assess and collect a civil money penalty against a financial institution in an amount not exceeding two hundred and fifty dollars for each transaction in violation of the provisions of this Section.

D. Nothing in this Section shall prevent a financial institution from engaging in a transaction with a former licensee who applies for, receives, and retains a new license in accordance with the provisions of this Chapter.

#### **§ 1052. Account; verification of license; cancellation; overdrafts**

A. Before any financial institution opens an account for a seller of checks or person who transmits money, which is intended to cover demands made by receivers of checks or money transmitted, it shall require the licensee seeking to open the account to present the license required by R.S. 6:1033, provided that the financial institution has actual knowledge that the person opening the account intends to engage in the sale of checks or money transmission. After being presented the license and before opening such account, the financial institution shall, within seventy-two hours, verify with the commissioner that the license is valid.

B. If the licensee closes any such account, the financial institution shall, within seventy-two hours, notify the commissioner of such closure.

C. If the licensee incurs overdrafts of at least one thousand dollars for a period of five consecutive days, and there is no agreed line of credit with the financial institution to cover these overdrafts, the financial institution shall, within seventy-two hours, notify the commissioner of the amount of such overdrafts.

#### **§ 1053. Significant developments; licensee's duty to report to commissioner**

A. It shall be the duty of a licensee to report to the commissioner, by certified mail, the following significant developments within fifteen days of the occurrence:

- (1) Filing a petition under either Chapter 7 or Chapter 11 of the United States Bankruptcy Code.
- (2) The commencement of any license suspension or revocation proceeding, either administrative or judicial, by any state, the District of Columbia, or any United States territory in which the licensee has been issued a license to transmit money or sell checks.
- (3) The indictment of an individual licensee, a partner if the licensee is a partnership, association, or, if the licensee is a corporation, the indictment of an officer or director.
- (4) The conviction, guilty plea, or plea of nolo contendere, if the court adjudicates the nolo contendere pleader guilty, of an individual licensee, a partner if the licensee is a partnership, association, or, if the licensee is a corporation, the conviction, guilty plea, or adjudication of guilt of an officer or director.

B. Failure of the licensee to report any significant development enumerated in this Section shall constitute grounds for revocation of the license.